

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAY SANDON COOPER

Plaintiff,

VS.

CITY OF DALLAS, TEXAS

Defendant.

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NO. 3-04-CV-1663-M

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Jay Sandon Cooper, appearing *pro se*, has filed a motion to proceed *in forma pauperis* in connection with the appeal of a final judgment in this civil rights action. The motion has been referred to U.S. Magistrate Judge Jeff Kaplan for recommendation pursuant to 28 U.S.C. § 636(b) and an order of reference dated August 19, 2008.

The standards governing *in forma pauperis* motions are set forth in 28 U.S.C. § 1915(a).

Under this statute:

[A]ny court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor.

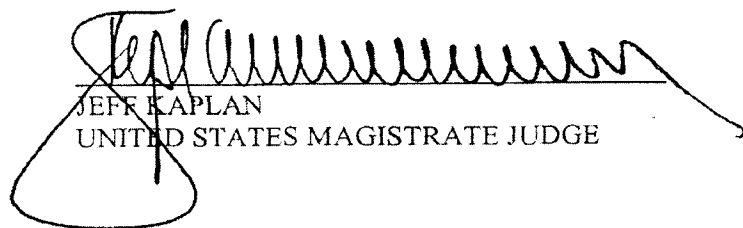
28 U.S.C. § 1915(a)(1). The affidavit must also state "the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." *Id.* Even if a litigant lacks the financial resources to pay the costs of an appeal, the district court may certify in writing that the appeal is not

taken in good faith. *Id.* § 1915(a)(3). An appeal is taken in good faith if it presents an arguable issue on the merits and therefore is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921, 8 L.Ed.2d 21 (1962).

In a sworn affidavit attached to his motion, plaintiff states that both he and his wife are unemployed. Their only monthly income is from social security, pension, or unemployment insurance. Plaintiff owns no property, other than his homestead and two cars. His monthly living expenses total \$4,500, which far exceed his income. Because plaintiff cannot afford to pay the filing fee and other costs of appeal, his motion to proceed *in forma pauperis* [Doc. #139] should be provisionally granted. However, the district judge will need to determine whether this appeal is frivolous. Plaintiff will be allowed to prosecute an appeal without the prepayment of fees and costs unless the district judge certifies in writing that the appeal is not taken in good faith.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: August 27, 2008.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE